



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-180 (Motor transportation, urban transportation)**

Date last adopted: **March 15, 1983**

Reviewer: **D. Douglas Titus**

Date review completed: **July 19, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document: Rule 180 distinguishes between motor transportation business or urban transportation business to determine the application of the appropriate public utility tax rate. The rule also explains and provides information to carriers on:

- **Collecting retail sales tax for sales of property or certain services;**
- **Paying retail sales tax when purchasing motor vehicles, trailers, and other tangible personal property, except those certain limited exempt purchases by carriers in interstate or foreign commerce explained in WAC 458-20-174; and**
- **Paying retailing B&O tax for sales of tangible personal property, and service B&O tax for checking, packing or crating services, the mere loading or unloading for others, commissions on sales of tickets for other carriers, traveler's checks, insurance, and transportation of logs and forest products over private roads.**

2. Need:

YES	NO	
X		Is the document necessary to comply with or clarify the application of the statutes that are being implemented? (E.g., does it provide detailed information not found in the statutes, reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied, etc?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
		Is the document necessary to protect or safeguard the health, welfare (budget



X		levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain. **This rule provides important tax-reporting information that reduces the need for taxpayers to search multiple statutes or rules to determine their tax-reporting responsibilities.**

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
	NA	Should this ancillary document be incorporated into a rule?
	NA	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
	NA	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief explanation of the issue(s).

Information now provided in the following documents should be incorporated into Rule 180:

- **ETA 254.04.180 (Livery Service in Businesses)** explains that taxpayers providing funeral hearses, limousines, and ambulances with drivers are taxable under the service classification of the B&O tax, while the retail sales tax applied to renting such vehicles without drivers. The instructions regarding limousine and livery services should be reviewed when Rule 180 is next revised to determine if and when the public utility tax classification should apply;



- **ETA 345.16.180 (Agricultural Commodities Hauling Classified within Motor Transportation Business)** explains that, for purposes of the public utility tax, “motor transportation business” encompasses the for-hire hauling of agricultural commodities;
- **ETA 346.16.180 (Urban Transportation—The Five Mile Standard)** explains that, for the purposes of determining an “urban transportation business,” the five-mile standard is applied on a straight line basis and not using the route actually traveled; and
- **ETA 347.16.180 (Federal Government Contractors Hauling Out-of-State Goods)** explains that federal government contractors hauling U.S. mail between Washington points only are subject to the public utility tax, notwithstanding that the mail may originate or be destined out of the state.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve?
X		Do changes in industry business methods warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule as written is generally organized in a clear manner; however, the following changes and additions would make Rule 180 more effective:**

- **Revise the rule in the format currently utilized by the Code Reviser’s Office and the Department;**
- **Provide additional information to more clearly distinguish between urban transportation and motor transportation;**
- **Refer the reader to the following rules for additional information that may be of interest:**
 - **WAC 458-20-261 (Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting);**
 - **WAC 458-20-117 (Sales and/or use of dunnage); and**
 - **WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);**
- **Explain the deduction provided by RCW 82.16.050 for amounts paid to others for providing a joint service;**
- **Explain the tax consequences of shipments from a manufacturer to points for containerization and subsequent transportation to a vessel for an interstate or foreign destination;**
- **Clarify when the packing and crating of household goods is incidental to the transportation service and when it is a separate taxable activity;**
- **Address the effects the changing industry practice of electronic data interchange (commonly referred to as “EDI”) vs. the traditional paper bills of lading on documentation requirements for determining the nature of the transportation service and whether the interstate exemption applies.**

WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce), WAC 458-20-179 (Public



utility tax), and WAC 458-20-193D all contain information relating to transportation businesses. At such time as Rule 180 is revised, it is further suggested that the pertinent information contained in these additional rules be combined in one rule.

5. Statutory authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the information provided in the document consistent with the statute(s) that it was designed to implement ? (If “no”, identify the specific statute and explain below. List all statutes being implemented in Subsection 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **This rule was adopted under the provisions of RCW 82.32.300, which authorizes the Department to adopt and publish rules to explain the provisions of the Revenue Act.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has the exclusive authority to administer the B&O, retail sales, and public utility taxes in this area.**

7. Cost: When responding, consider only the costs imposed by the document and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.**



8. Fairness: When responding, consider only the impacts imposed by the document and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?

Please explain. **This document currently results in the equitable treatment of those required to comply with it.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent these statutes apply to taxation of persons operating as private or common carriers by air, rail, or water:**

- **RCW 82.04.040 (Defines “sale”);**
- **RCW 82.04.050 (Defines “sale at retail,” and “retail sale”);**
- **RCW 82.04.080 (Defines “gross income of the business”);**
- **RCW 82.04.190 (Defines “consumer”);**
- **RCW 82.04.220 (Business and occupation tax imposed);**
- **RCW 82.04.250 (Tax on retailers);**
- **RCW 82.04.290 (Tax on . . . service activities);**
- **RCW 82.04.355 (Exemptions-Ride sharing);**
- **RCW 82.08.020 (Tax imposed--Retail sales . . .);**
- **RCW 82.12.0253 (Exempts from use tax personal property exempt from public utility tax);**
- **RCW 82.08.0254 (Exemptions--Nontaxable sales);**
- **RCW 82.08.0261(Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce);**
- **RCW 82.16.010 (Definitions);**
- **RCW 82.16.020 (Imposes the public utility tax);**
- **RCW 82.16.030 (Taxable under each schedule if within its purview)**
- **RCW 82.16.047 (Exemptions-Ride sharing);**
- **RCW 82.16.050 (Provides for deductions in computing the public utility tax); and**
- **RCW 82.16.080 (reflects possibility of tax under other chapters of RCW).**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 254.04.180 (Livery Service in Businesses);**
- **ETA 345.16.180 (Agricultural Commodities Hauling Classified within Motor Transportation Business);**
- **ETA 346.16.180 (Urban Transportation—The Five Mile Standard); and**
- **ETA 347.16.180 (Federal Government Contractors Hauling Out-of-State Goods).**

Court Decisions: **None**



Board of Tax Appeals Decisions (BTAs): None

Administrative Decisions (e.g., WTDs):

- **Determination No. 97-74, 17 WTD 048 (1997)**, held that storage in transit of household goods transported on a through bill of lading to an out-of-state destination were accessorial charges exempt from public utility and B&O taxes;
- **Determination No. 96-134, 16 WTD 102 (1996)**, held that for purposes of distinguishing between urban transportation rate and the motor transportation rate, the trip is measured by the distance where the truck picks up its load to where it delivers it, not the actual route taken by the truck;
- **Determination No. 91-175, 11 WTD 361 (1992)**, held that the public utility tax on gross income for urban transportation applies to a taxi company without any deduction for labor costs or any other expense whatsoever such as taxicab rental;
- **Determination No. 91-164, 11 WTD 337 (1992)**, held that income from operating cabulances (without medical assistance) are taxed under the urban/motor transportation public utility tax and not the service B&O tax;
- **Determination No. 91-110, 11 WTD 163 (1991)**, held that where a taxpayer has a contract to deliver logs and the contract requires logging services, income is proportionately subject to the extracting B&O tax and the motor transportation public utility tax;
- **Determination No. 90-370, 11 WTD 087 (1990)**, held that cabulance service is taxed under the urban transportation and motor transportation classifications for public utility tax purposes and not B&O tax;
- **Determination No. 90-385, 10 WTD 332 (1990)**, held that income received by taxi companies for transporting elderly and physically challenged passengers is subject to the public utility tax without deductions;
- **Determination No. 90-280, 10 WTD 079 (1991)**, held that income from storage, handling, or customs clearance services not incidental to the taxpayer's transportation business is subject to the B&O tax under the warehouse or service classifications depending on the nature of the business activity;
- **Determination No. 90-126, 9 WTD 277 (1990)**, held that transportation services provided for passengers to and from an airport prior to the point of origin or after the point of destination are wholly intrastate and subject to the public utility tax;
- **Determination No. 90-108, 9 WTD 231 (1990)**, held that a portion of the income of an extractor for hire from logging contracts attributable to hauling logs is subject to the motor transportation public utility tax;
- **Determination No. 89-503, 8 WTD 341 (1989)**, held that income from hauling which is not under a through interstate bill of lading is fully subject to the public utility tax under the motor transportation or the urban transportation categories;
- **Determination No. 89-337, 8 WTD 059 (1989)** held that the service of moving office and tool trailers from jobsite to jobsite is motor transportation business and subject to the public utility tax and not the retail sales or use taxes;
- **Determination No. 87-267, 4 WTD 011 (1987)**, held that the use of the preposition "between" and the pronoun "either" means that only two cities or towns are involved in the definition of "urban transportation;" and
- **Determination No. 87-53, 2 WTD 269 (1986)**, held that no exemption allowed from urban transportation tax for export logs hauled between points in the same city.



The following determination refers to Rule 180 only but does not deal with its application:

- **Determination No. 87-269, 4 WTD 017 (1987).**

Attorneys General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **RCW 46.74.010 (Definitions);**
- **RCW 81.68.010 (Defines “auto transportation company”); and**
- **RCW 81.80.010 (Defines, among other things, “common carrier,” “contract carrier,” “private carrier,” and “motor carrier”).**

Rule 180 refers to the following regulations:

- **WAC 458-20-171 (Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic);**
- **WAC 458-20-174 (Sales to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc.); and**
- **WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).**

The following regulations refer to Rule 180:

- **WAC 458-20-179 (Public utility tax); and**
- **WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts).**

The following was reviewed but contains no substantive information relating to Rule 180:

- **Determination No. 87-269, 4 WTD 017 (1987).**



10. Review Recommendation:

- ☒ Amend
- ☐ Repeal
- ☐ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

The rule should be amended to incorporate the ETAs identified above and to the additional information noted in Section 4. Rules 175, 179, and 193D all contain information relating to transportation businesses. It is further suggested that the pertinent information contained in some or all of these additional rules be consolidated in one rule.

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: